SUPREME COURT OF THE STATE OF WASHINGTON

NO. 81750-2

COURT OF APPEALS - DIVISION III

NO. 25218-3-III

STATE OF WASHINGTON,

Respondent,

v.

RICARDO INIGUEZ,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR

FRANKLIN COUNTY

SUPPLEMENTAL STATEMENT OF FACTS

Respondent's Brief

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

SUPPLEMENTAL STATEMENT OF FACTS

Defendant/Appellate Iniguez adopts the Statement of Facts from his original Appellate brief filed in Division III of the Court of Appeals on January 9, 2007.

Defendant further argues that the delay in the instant case was almost 11 months rather than 8½ months. Defendant was arrested on May 26, 2005 (CP 233) and was arraigned on June 7, 2005 (CP 219). Bail was set at $150,000 (CP 226). A trial started on February 8, 2006, which was 258 days from arrest and 246 days from arraignment. This "trial" however was started without an interpreter who could properly translate the Spanish language. This fault should be placed on the State and the Court who have the obligation to ensure that the trial is timely held. This inadequate trial might stop the clock from running on CrR 3.3, but should not effect analysis under the constitution. The defendant argues that trial did not start until April 12, 2006, which was 321 days from arrest and incarceration and 309 days from arraignment.

ARGUMENT

Defendant argues that both 8½ months and nearly 11 months are both presumptively prejudicial delays under the circumstances of this case. This is true because defendant Iniguez:

1. Was held in jail for the entire period under $150,000 bail;
2. Always objected to every continuance;
3. Joinder was not requested by the State until they filed a motion on July 26, 2005, the day before the trial was to start;
4. The defendant was never told on the record that joinder would mean that additional delays could be obtained by his co-defendant over his objection;
5. The defendant moved once pro se and twice through counsel for severance to obtain an earlier trial date;
6. He moved pro se early on (August 9, 2005) to dismiss for failure to obtain a speedy trial;
7. He always refused to waive speedy trial;
8. He asked for, but was denied, a bail reduction because of the trial delay;

9. He argued early on to the trial court that lengthy pretrial detention was prejudicial. (November 23, 2005).

The law in this state on constitutional speedy trial has analyzed the four factors outlined in *Doggett v. U.S.*, 505 U.S. 647, 112 S.Ct. 2686, 120 L.Ed.2d 520 (1992) and *Barker v. Wingo*, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 110 (1972).

Defendant argues that the delay before trial was almost 11 months and was uncommonly long given the defendant's repeated, unwavering and continuous demand for trial and the State's dogged insistence that they would try this case at their convenience. The Court should take no pride in the trial court record that shows no effort to accommodate the defendants requests, no effort to force the state and co-defendant to prepare, and no effort to require the immediate attendance of witnesses.

The other factors outlined in *Doggett* and *Barker* also favor the defendant. *Barker's* second factor asks, "whether the government or the criminal defendant is more to blame for that delay?" *Baker*, 407 U.S. at 530, 92 S.Ct., at 2192.

It would be difficult to find any basis for believing that any portion of the delay could be blamed on defendant.

Baker's third factor asks, "whether, in due course, the defendant asserted his right to a speedy trial?" The defendant's assertions were not just in due course, but in every course staring on July 26, 2006 when he was first aware that he would not be going to trial the next day as he had been told and at every opportunity thereafter without waiving in any instance or in any manner.

Baker's fourth factor asks whether defendant Iniguez suffered any prejudice as a result of the delay. Defendant argues that pretrial incarceration, like any incarceration, depreciates self respect, dampens one's will, and lessens the defendants status in the community. The presumptive prejudice accorded pretrial incarceration is well taken. An incarcerated defendant is limited as to the daily news he can receive, is told what to wear, what to eat and when to eat it. He is told when to rise and when to sleep. He is restricted on who he can see, when they can visit, and how they can communicate. All of his communications are tape recorded and can

be reviewed by police. In this atmosphere, one's character and intellect do not flourish, but conversely deteriorate. This is not an environment conducive to preparation for a trial of ones liberty.

STATE CONSTITUTION

Defendant additionally argues that the Washington State Constitution Article 1, § 22 although essentially identical to the speedy trial guarantee of the Sixth Amendment of the United States Constitution should afford defendants charged in this state with greater protections the Federal guarantee.

In 1909, this state passed a statute in Laws of 1909, ch 249 § 60 that required a defendant to be tried in 60 days. That rule prevails to this day in Criminal Rule 3.3. The rule as it now exists contains multiple exceptions and requires timely procedural steps to enforce a speedy trial. In the instant case, CrR 3.3 was useless to effectuate a speedy trial for this defendant and would continue to be useless under the state's analysis as long as Mr. Iniguez's co-defendant continued to seek and receive continuances.

Under *State v. Gunwall*, 106 Wn.2d 54 (1986), the court established criteria for finding broader protection under the state constitution. *Gunwall* said:

> The following nonexclusive neutral criteria are relevant in determining whether, in a given situation, the Washington State Constitution should be considered as extending broader rights to its citizens than the United States Constitution; (1) the textual language; (2) differences in the texts; (3) constitutional history; (4) preexisting state law; (5) structural differences; and (6) matters of particular state or local concern.

Under this States long existing requirement that criminal defendants be tried in 60 days if incarcerated and the resultant expectation that a speedy trial is a particular concern in this state. Defendant argues that *Gunwall* mandates broader protection. Defendant argues that Article 1, § 22 of this states Constitution should be interpreted to give greater rights to a speedy trial than the federal Constitution grants.

Defendant argues that this court should construe Article 1, § 22 to require trial within a certain period of time in cases where a defendant has not waived a right to speedy trial. Defendant argues that this period should not exceed 6 months which is 3 times the 60 day speedy trial rule for incarcerated defendants.

CONCLUSION

Defendant argues that this court uphold Division III's dismissal with prejudice and rule that the state constitution requires trial to occur not later than 6 months after arraignment for incarcerated defendants who have not waive speedy trial.

Respectfully Submitted this 10th day of December, 2008.

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CERTIFICATE OF MAILING

I hereby certify under penalty of perjury under the laws of the State of Washington, that a copy of the foregoing was mailed, via 1st Class Mail, to Frank Jenny, DPA, Franklin County Prosecutor, 1016 N. 4th Street, Pasco, WA 99301 and Ricardo Iniguez, DOC #895746, c/o Monroe Correction Center, P.O. Box 777, Monroe, WA 98272 by depositing in the mail of the United States of America on the 10th day of December, 2008.

Jacquie Linton